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Nos. 642, 680 and 691

In The
Supreme Court of the United States

October Term, 1966

BALTIMORE AND OHIO RAILROAD COMPANY et al.,

Appellants

v.

UNITED STATES OF AMERICA et al.

THE DELAWARE AND HUDSON RAILROAD CORPORATION,

Appellant

v.

UNITED STATES OF AMERICA et al.

ERIE-LACKAWANNA RAILROAD COMPANY,

Appellant

v.

UNITED STATES OF AMERICA et al.

On Appeals from the United States District Court for the Southern District of New York.

BRIEF, AMICUS CURIAE, OF THE COMMONWEALTH OF PENNSYLVANIA

EDWARD FRIEDMAN
Attorney General
EDWARD MUNCE
Assistant Attorney General
ROBERT M. HARRIS
Assistant Attorney General
Attorneys for Commonwealth of Pennsylvania
127 North Office Building
Harrisburg, Pennsylvania

Murrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

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THE INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania (Commonwealth) has a vital interest in protecting and promoting the establishment and maintenance of a viable, adequate and efficient transportation system in the public interest, and for the benefit of all the inhabitants of the Commonwealth.

The merger which is the subject of the instant appeals would appear to affect materially the character and adequacy of both the passenger and freight transportation offered by the proposed railway system. The effects of the merger are likely to be felt by: (1) business establishments and industrial plants, as shippers; (2) workers whose employment is linked directly or indirectly to rail service; (3) the public, as passengers; and (4) Pennsylvania communities in their efforts to promote future economic growth and development. The interest of the Commonwealth in the welfare of all of these segments of the economy and the public interest, is self-evident.

The Commonwealth participated as a party, presented evidence and cross-examined witnesses in the proceedings before the Interstate Commerce Commission (Commission), in *The Pennsylvania Railroad Company—Merger—The New York Central Railroad Company*, 327 I.C.C. 475, decided April 6, 1966 (PRR and NYC, respectively). Although the Commonwealth did not itself petition for reconsideration of

the said order, it was represented by counsel in the reconsideration proceedings before the Commission.

The Commonwealth did not participate in the appeals before the three-judge federal district court in the Southern District of New York (District Court), the decision in which has been brought for review before this Court.

This brief, as *amicus curiae*, is submitted on behalf of the Commonwealth by its Attorney General pursuant to Rule 42(4) of the Rules of this Court.

The position of the Commonwealth is that further delay of the proposed merger is no longer in the public interest and will unnecessarily postpone the economic benefits to the Commonwealth which will result from the unification. This is emphasized in the light of the report of Commissioner Webb of the Interstate Commerce Commission in Finance Docket No. 21510 (Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company—Merger, etc., et al.) served December 22, 1966, in which it is recommended that Erie-Lackawanna Railroad Company (E-L) and Delaware and Hudson Railroad Corporation (D & H) be included in the Norfolk and Western railway system, but not before the Penn-Central merger "shall have been effectuated" (Report, page 160).

As hereinafter set forth, it is respectfully submitted to this Court that it should affirm the decision of the District Court and permit the prompt consummation of the proposed merger.

ARGUMENT

The Commonwealth initially opposed before the Commission the merger of The New York Central Railroad Company, (NYC) into The Pennsylvania Railroad Company (PRR). After making a computer study of the proposed merger, including alternate methods of operation of the merged company, the Commonwealth approved the merger conditioned upon the imposition by the Commission of specified protective conditions which were enumerated in its brief filed with the Commission.* Although the Commission did not adopt all the conditions proposed by the Commonwealth, other conditions imposed by the Commission, and commitments made by PRR and NYC to the Commission, have accomplished in substance the objectives of the Commonwealth.

The Commonwealth is aware of the public interest in maintaining and preserving as viable entities Erie-Lackawanna Railroad Company (E-L), Delaware and Hudson Railroad Corporation (D & H), Reading Company (Reading) and The Central Railroad Company of New Jersey (CNJ) and other carriers providing rail service in Pennsylvania. However, the Commonwealth is persuaded that the traffic conditions presently provided in the merger orders of the Commission, together with such other protective conditions as the Commission hereafter may determine should be applied, afford reasonable protection to the interests of the rail carriers operating in Pennsylvania. In

addition, the Commission has reserved the right to impose indemnity payments retroactive to the date of consummation of the merger.

The Commonwealth is of the view that the public interest will be best served by prompt action denying the appeals from the District Court. The Commission has found that:

> ". . . the merger will benefit rather than harm the Commonwealth. It will assist in attracting new industries through the applicant's increased ability to meet the needs for specialized equipment, more adequate car supply, new land for industrial development and expanded transit and stop-off privileges. It will open NYC marketing areas to Pennsylvania industries and will make available improved service from Pennsylvania communities to NYC points in other States. The concentration of maintenance and construction operations in Pennsylvania should bring a net gain of employment to the Commonwealth . . ." (327 ICC, pages 492-493).

The District Court has also supported the Commission on this point by stating:

> "The Commission found, with ample supporting evidence, 'that the transaction will permit more economical and efficient use of the applicants' transportation facilities' and that the resulting economies 'will redound in large part to the benefit of shippers, and thus to the general public, either through the improved service thereby made possible or lower rates'." (Slip opinion, page 16.)

The Commonwealth is engaged in a program to promote high speed rail transportation railroad service as well as improvements in urban common carrier mass transportation by railroads and other carriers. This program is directly related to PRR since it transports more passengers, and over longer routes, than any other railroad in Pennsylvania. The improvement of the financial strength and stability of PRR as a result of its merger with NYC will make it better able to cooperate with the Commonwealth in achieving the goal of better passenger service.

Delay of the merger pending termination of the proceedings before the Commission involving protective conditions and inclusion of E-L, D & H and others in the Norfolk and Western system will unwarrantedly postpone the benefits to the Commonwealth of the PRR-NYC merger. It is impossible to predict how long such proceedings will be pending before the Commission or whether the parties, or some of them, will thereafter seek court review of the Commission's orders. There is always the possibility that further delay could cause the merger never to be consummated. In such event, the benefits of the merger would be permanently lost to the Commonwealth, a result which would not be in the public interest.

CONCLUSION

The Commonwealth respectfully submits that the proposed merger of PRR and NYC will be economically beneficial to the Commonwealth as shown by the

findings of the Commission and the District Court. The Commission has imposed traffic conditions on the merging railroads which will afford reasonable protection to their competitors pending a final determination by the Commission whether additional protective provisions or revised indemnity provisions should be imposed on the merged railroad. The PRR and NYC have indicated to the Commission their willingness to abide by such post-merger protective conditions as may be imposed by the Commission, including retroactive indemnity payments. Under these circumstances, prompt and early consummation of the proposed merger is in the public interest and the decision of the District Court in the instant proceedings should be affirmed.

Respectfully submitted,

EDWARD FRIEDMAN
Attorney General
EDWARD MUNCE
Assistant Attorney General
ROBERT M. HARRIS
Assistant Attorney General
Attorneys for Commonwealth of Pennsylvania

127 North Office Building
Harrisburg, Pennsylvania